

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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UNITED STATES OF AMERICA,	:	CASE NO. 1:17-cr-00060-1
Plaintiff,	:	ORDER
v.	:	
LEVERT A. BATES,	:	
Defendant.	:	

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JAMES S. GWIN, UNITED STATES DISTRICT COURT JUDGE:

In February and March 2024, Defendant Levert Bates filed two post-conviction motions that he titled as a “Motion for Reduction in Sentence Pursuant to 18 U.S.C. § 3582(c)(2)” and “Motion for Leave to Amend 18 U.S.C. § 3582(c)(2) Pursuant to Rule 40B and § 403 of the First Step Act,” respectively.<sup>1</sup>

Based on the motions’ titles, Bates appears to be seeking a sentence reduction due to a retroactive sentencing amendment.<sup>2</sup> However, the motions do not substantively raise any sentencing amendment arguments. Nor do the motions raise arguments under § 3582’s general compassionate release provision.<sup>3</sup> Rather, the motions challenge the validity of Bates’ conviction and sentence.<sup>4</sup>

Conviction- and sentence-validity arguments must be raised under 28 U.S.C. § 2255, not under the compassionate release statute.<sup>5</sup> So, the Court recharacterizes Bates’ two motions as § 2255 motions.

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<sup>1</sup> Docs. 163, 164.

<sup>2</sup> See 18 U.S.C. § 3582(c)(2).

<sup>3</sup> See 18 U.S.C. § 3582(c)(1)(A).

<sup>4</sup> *Id.*

<sup>5</sup> *United States v. West*, 70 F.4th 341, 347 (6th Cir. 2023) (collecting cases).

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Recharacterizing Bates' motions as § 2255 motions limits Bates' ability to raise second or successive § 2255 motions in the future.<sup>6</sup> Therefore, the Court gives Bates the opportunity "to withdraw the motion[s] or to amend [them] so that [they] contains all the § 2255 claims he believes he has."<sup>7</sup>

In sum, the Court recharacterizes Bates' motions as § 2255 motions. If Bates wishes to withdraw or amend those motions, he must do so by **July 1, 2024**. The government shall respond to Bates' motions, including any amendment, by **July 22, 2024**. If Bates wishes to submit a reply, he must do so by **August 5, 2024**.

IT IS SO ORDERED.

Dated: June 10, 2024

*s/ James S. Gwin*  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>6</sup> 28 U.S.C. § 2255(h).

<sup>7</sup> *Castro v. United States*, 540 U.S. 375, 383 (2003).